IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.2567 of 2007
Date of decision: 10.09.2007

The Chief Engineer, PWD, B&R, Punjab.

-----Petitioners

Vs.

Mahavir and another.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Suvir Sehgal, Addl. Advocate General, Punjab.
for the petitioners.

Mr. Gurdip Singh, Advocate
for respondent No.1.

ADARSH KUMAR GOEL, J.

This petition seeks quashing of award dated 6.10.2005, Annexure P-1, reinstating respondent No.1, workman, with continuity of service and 30% backwages.

Case of the workman was that he served as Chowkidar for the period from 1.7.1996 to 31.7.1997 and his services were, thereafter, terminated without following the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, “the Act”). The management contested the claim and stated that the workman was duly paid one month’s notice pay and gratuity and he was a daily wager and thus, his termination was not invalid.

The Labour Court held that the workman having been retrenched without following the provisions of Section 25-F of the Act, termination of his services, was invalid.

Learned counsel for the petitioners submitted that the workman being a daily wager, termination of his services by giving one month's notice and gratuity, was valid and provisions of Section 25-F of the Act were not attracted. The present case was governed by exception (bb) of Section 2(oo) of the Act. Learned counsel for the petitioner has also handed over a sum of Rs.7074/- to the counsel for the workman and has pointed out that, as noticed in order dated 22.1.2007, the amount of Rs.13510/- was handed over to the counsel for the workman. Similarly, on 17.11.2006, drafts of Rs.15586/- and Rs.114/- respectively, were handed over to the counsel for the workman. Thus, the payments under Section 17-B of the Act had been made up-to-date.

Learned counsel for the workman relied upon judgments of the Hon'ble Supreme Court in ***Krishna Bahadur v. Purna Theatre and others*** 2004 SCC (L&S) 1086, dealing with the effect of violation of Section 25-F of the Act and judgment of the Hon'ble Supreme Court in ***Rattan Singh v. Union of India and another*** 1998 SCC (L&S) 170, directing payment of compensation of Rs.25,000/- on account of violation of provisions of Section 25-F of the Act.

We have considered the rival submissions and perused the record.

The employment in question is a public employment, governed by rules and regulations. The workman was not appointed by following any procedure and was a daily wager. In such a situation, the workman will be governed by Clause (bb) of Section 2(oo) of the Act, as held in ***Municipal Council, Samrala v. Raj Kumar*** (2006) 3 SCC 8. Reference may also be made to judgments of the Hon'ble Supreme Court in ***State of UP v. Neeraj Awasthi*** (2006) 1 SCC 667, ***Reserve Bank of India*** **v.** ***Gopinath Sharma and another,*** (2006) 6 SCC 221 and ***Gangadhar Pillai v. Siemens Ltd.*** (2007)1 SCC 533. In such circumstances, Section 25-F of the Act is not attracted.

Accordingly, this petition is allowed and the impugned award is set aside.

(Adarsh Kumar Goel)
Judge

September 10, 2007 **(Ajai Lamba)**
ashwani **Judge**